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8 **UNITED STATES DISTRICT COURT**
9
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 SERGE HAITAYAN, JASPREET
13 DHILLON, ROBERT ELKINS, and
14 MANINDER “PAUL” LOBANA,

15 Plaintiffs,

16 v.

17 7-ELEVEN, INC., a Texas corporation.

18 Defendant.

Case No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 **I. INTRODUCTION**

2 1. This is an action for injunctive and declaratory relief, brought pursuant to Fed. R.
3 Civ. P. 57, 28 U.S.C. §§ 2201–2202, California Code of Civil Procedure §§ 525, 526, and 1060,
4 California Labor Code §§ 98.6 and 1102.5, 29 U.S.C. §215(a)(3), and California Business &
5 Professions Code §§17200 *et seq.* The plaintiffs in this action are named plaintiffs in a putative
6 class action entitled *Haitayan et al v. 7-Eleven, Inc.*, No. 2:17-cv-07454-JFW-JPR. They
7 brought that action late last year on behalf of 7-Eleven franchisees throughout California,
8 contending that 7-Eleven has misclassified them as independent contractors when they are
9 actually employees entitled to state and federal wage law protections. They allege in that the
10 action that they and other 7-Eleven franchisees have essentially worked as 7-Eleven store
11 managers but had to pay large sums of money for their jobs (in the form of “franchise fees”) and
12 have suffered a variety of other wage law violations. This Court dismissed their claims on
13 March 14, 2018, and the plaintiffs have appealed that dismissal to the Ninth Circuit, where their
14 case is currently pending. *See* Ninth Circuit No. 18-55462.

15 2. While their wage law class action is pending at the Ninth Circuit, 7-Eleven is now
16 engaged in an attempt to obtain releases from 7-Eleven franchisees which would prevent them
17 from participating in that action, should it be successful following appeal. Plaintiffs now bring
18 this declaratory and injunctive action seeking to prevent 7-Eleven from interfering with their
19 pending case in this manner. Rather than awaiting the result of the appellate process, and
20 potential further proceedings below, 7-Eleven is taking matters into its own hands to ensure that
21 neither the plaintiffs, nor the putative class, will be able to pursue these claims, even if such
22 claims would ultimately be determined to be meritorious.

23 3. Specifically, 7-Eleven is now distributing a new franchise agreement to all of its
24 franchisees and encouraging them to sign it quickly. This new franchise agreement includes a
25 general release of all claims, which purports to include the wage claims in the pending *Haitayan*
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1 action. Despite Plaintiffs' counsel's request that 7-Eleven carve out of any release it may seek
2 from franchisees those claims that are now pending in the *Haitayan* case at the Ninth Circuit,
3 7-Eleven has taken the position that it is free to obtain general releases from franchisees despite
4 these ongoing legal proceedings.

5 4. As set forth further below, and as Plaintiffs will explain in their Motion for
6 Temporary Restraining Order and Preliminary Injunction, such action by 7-Eleven violates the
7 rights of the plaintiffs, and other 7-Eleven franchisees on whose behalf Plaintiffs have pursued
8 the original *Haitayan* action and this action. The plaintiffs should be free to pursue their wage
9 claims without being faced with the "Hobson's" choice of doing so only by not signing the new
10 franchise agreement and thereby discontinuing their work for 7-Eleven (and giving up their
11 livelihoods, as well as walk away from the substantial investment they have been required to
12 make in order to work for 7-Eleven). 7-Eleven's requirement that the Plaintiffs sign this new
13 franchise agreement, including a general release, in order to continue working for 7-Eleven
14 effectively prevents their ability to attempt to vindicate their rights in the pending *Haitayan* case
15 and constitutes express retaliation against them if they were to choose to continue with their
16 claims (by forcing them to thereby end their relationship with 7-Eleven). Further, 7-Eleven's
17 action in distributing this franchise agreement with a general release puts putative class members
18 in the same position of being forced to make this untenable choice. It also constitutes a coercive
19 and misleading attempt to release putative class members' claims in the *Haitayan* case, without
20 any consideration, other than being able to keep their jobs.

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22 5. In sum, 7-Eleven's conduct seeking to undermine Plaintiffs' ability to vindicate
23 their rights, as well as those of other 7-Eleven franchisees throughout California, is coercive,
24 oppressive, unconscionable, and in contravention of California and federal law. For all of these
25 reasons and as set forth more fully below and as Plaintiffs will explain in their forthcoming
26 Motion, Plaintiffs seek declaratory relief, and preliminary and permanent injunctive relief,
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1 enjoining 7-Eleven from conditioning the renewal of franchise agreements on a general release
2 of Plaintiffs' and putative class members' wage claims that are pending in the *Haitayan* case on
3 appeal and declaring any such signed releases invalid.

4 **II. PARTIES**

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6 6. Plaintiff Serge Haitayan is an individual and citizen of the State of California,
7 County of Fresno. At all times relevant hereto, Haitayan has worked for 7-Eleven by operating
8 one of its retail convenience stores as a "franchisee" in the City of Fresno, County of Fresno,
9 California.

10 7. Plaintiff Jaspreet Dhillon is an individual and citizen of the State of California,
11 County of Los Angeles. At all times relevant hereto, Dhillon has worked for 7-Eleven by
12 operating one of its retail convenience stores as a "franchisee" in the City of Reseda, County of
13 Los Angeles, California.

14 8. Plaintiff Robert Elkins is an individual and citizen of the State of California,
15 County of San Diego. At all times relevant hereto, Elkins has worked for 7-Eleven by operating
16 two of its retail convenience stores as a "franchisee", one in the City of El Cajon, County of San
17 Diego, California, and one in the City of Lakeside, County of San Diego, California.

18 9. Plaintiff Maninder "Paul" Lobana is an individual and citizen of the State of
19 California, County of Ventura. At all times relevant hereto, Lobana has worked for 7-Eleven by
20 operating several of its retail convenience stores as a "franchisee", one in the City of Simi Valley,
21 County of Ventura, California, and one in the City of Oxnard, County of Ventura, California, and
22 one in the City of Alhambra, County of Los Angeles, California.

23 10. Defendant 7-Eleven Inc. is a Texas corporation with its corporate headquarters
24 and executive office located at 3200 Hackberry Road, Irving, Texas 75063. Defendant also
25 maintains a business office in California at 1430 Truxton Avenue, 5th Floor, Bakersfield,
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1 California 93301. Defendant operates approximately 1,500 7-Eleven convenience stores in the
2 State of California.

3 **III. JURISDICTION AND VENUE**

4 11. This Court has diversity jurisdiction under 28 U.S.C. § 1332 in that each Plaintiff
5 is a citizen of a different state from Defendant, and each of their claims in this case has a value,
6 or amount in controversy, in excess of \$75,000.

7 12. This Court also has ancillary jurisdiction under 28 U.S.C. § 1367 to hear this
8 matter as it is substantially related to a previously filed case before this Court, *Haitayan et al. v.*
9 *7-Eleven, Inc. et al.*, No. 2:17-cv-07454-JFW-JPR. The claims brought herein bear a logical
10 relationship to the aggregate core of operative facts in that case, because this case challenges 7-
11 Eleven's ability to force Plaintiffs to choose between keeping their jobs and pursuing their wage
12 law allegations in that previously filed case.

13 13. An actual controversy exists between the Parties within the meaning of 28 U.S.C.
14 § 2201, which is of sufficient immediacy to warrant declaratory relief.

15 14. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) & (c) because a
16 substantial number of the events giving rise of the claims asserted in this Complaint occurred
17 within this District and Division, because Defendant resides within and has substantial contacts
18 in this District and Division, and because Plaintiffs Dhillon and Lobana reside and operate 7-
19 Eleven retail convenience stores within this District and Division.

20 **IV. STATEMENT OF FACTS**

21 15. 7-Eleven is an international convenience store chain. For many (but not all) of its
22 convenience stores, it uses a "franchise" model, in which it charges individuals large sums of
23 money to purchase a "franchise" and supposedly own their own retail business. 7-Eleven
24 classifies the "franchisees" as independent contractors.

25 16. In a previously filed case, *Haitayan et al v. 7-Eleven, Inc.*, No. 2:17-cv-07454-
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1 JFW-JPR, Plaintiffs, who have purchased 7-Eleven franchises in California, contended that they
2 were misclassified as independent contractors when they were actually employees and thereby
3 suffered various violations of state and federal wage laws.

4 17. This Court dismissed that case on March 14, 2018, when it granted 7-Eleven's
5 motion for judgment on the pleadings. *See Haitayan*, ECF No. 132. The plaintiffs timely
6 appealed, and their case is now pending at the Ninth Circuit Court of Appeals. *See Ninth Circuit*
7 *No. 18-55462*.

8 18. On April 30, 2018, the California Supreme Court issued its decision in *Dynamex*
9 *Operations W., Inc. v. Superior Court*, 4 Cal. 5th 903, 416 P.3d 1 (2018), which clarified the test
10 for distinguishing between employees and independent contractors for purposes of wage claims
11 covered by the Wage Orders. In light of that decision, Plaintiffs submit that their appeal of the
12 dismissal of their prior case in *Haitayan* is much more likely to be successful, as 7-Eleven will
13 now be required to satisfy a strict "ABC" test in order to justify classifying them as independent
14 contractors. In particular, Prong B of that test would require 7-Eleven to prove that the plaintiffs
15 perform services outside 7-Eleven's usual course of business, and Plaintiffs submit that 7-Eleven
16 will not be able to make that showing. Plaintiffs run retail convenience stores for 7-Eleven, and
17 operating retail stores is 7-Eleven's usual course of business. Plaintiffs also deny that 7-Eleven
18 would be able to prove Prong A or Prong C of this test either, as Plaintiffs perform these services
19 under 7-Eleven's detailed direction and control (Prong A) and they do so while "wearing the hat"
20 of 7-Eleven, rather than the "hat" of their own independent business (Prong C).

21 19. In order to work as a "franchisee" of 7-Eleven, running one or more of its
22 convenience stores, Plaintiffs and other franchisees have been required to sign a franchise
23 agreement. These agreements, which are adhesive, typically last for 15 years. These agreements
24 are provided on a "take-it-or-leave-it" basis, with no opportunity for franchisees to individually
25 negotiate their terms.
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1 encouraging all of its franchisees to sign it by the end of 2018.

2 29. 7-Eleven has engaged in misleading communications with its franchisees,
3 implying that they must sign the new franchise agreement soon, even for those franchisees
4 whose current agreements do not expire in 2019.

5 30. For example, in May 2018, 7-Eleven began sending misleading e-mails to all
6 California franchisees, with the subject line: "Action Needed Regarding 2019 Franchise
7 Agreement." Through these and other communications, 7-Eleven has suggested to all of its
8 franchisees that they must sign this new agreement soon, including the general releases of claims
9 included therein.

10 31. 7-Eleven is now actively soliciting and pressuring its franchisees to sign these
11 general releases before the end of 2018, both for those franchisees whose agreements expire in
12 2019, as well as others whose agreements do not expire in 2019.

13 32. 7-Eleven's actions are inherently coercive, unconscionable, and retaliatory in
14 contravention of California state and federal law. 7-Eleven is forcing Plaintiffs to choose
15 between keeping their jobs (as well as not walking away from the substantial investments they
16 were required to make to obtain those jobs) and pursuing their state and federal labor claims.
17 Indeed, 7-Eleven's actions are overtly retaliatory because 7-Eleven will only allow Plaintiffs to
18 continue working for the company in their current positions if they sign the new franchise
19 agreement and thereby release their claims in the previous *Haitayan* matter.

20 33. 7-Eleven's actions are likewise coercive, unconscionable, misleading, and
21 retaliatory with respect to other California franchisees on whose behalf Plaintiffs brought the
22 previous *Haitayan* matter. 7-Eleven is also forcing these franchisees to choose between keeping
23 their jobs (as well as not walking away from the substantial investments they were required to
24 make to obtain those jobs) and being allowed to participate as putative class members, should the
25 *Haitayan* matter be successful. 7-Eleven's actions are overtly retaliatory in that any franchisee
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1 who chooses not to sign the general release, so as to thereby preserve his or her claims in the
2 *Haitayan* case, would not be permitted to continue in their current jobs with the company as
3 “franchisees” running 7-Eleven convenience stores.

4 34. 7-Eleven’s conduct presents a matter of imminent injury to Plaintiffs. Plaintiffs
5 face the prospect of losing their jobs, as well as their substantial investment in their franchises, if
6 they do not sign the new franchise agreement, including the general release. If they sign this
7 agreement, they will not be able to pursue their state and federal wage claims included in the
8 previous *Haitayan* matter.

9 35. Likewise, 7-Eleven’s conduct presents a matter of further injury to the putative
10 class members in the previous *Haitayan* matter, as they likewise face the prospect of losing their
11 jobs, as well as their substantial investment in their franchises, if they do not sign the new
12 franchise agreement, including the general release. If they sign this agreement, they will not be
13 able to have their state and federal wage claims pursued on their behalf as putative class
14 members in the previous *Haitayan* matter.

15 **COUNT I**

16 **Declaratory Judgment**

17 36. Plaintiffs reallege and incorporate by reference the allegations in the preceding
18 paragraphs as if fully set forth herein.

19 37. An actual controversy of sufficient immediacy exists between the Parties as to
20 whether 7-Eleven may require Plaintiffs and other 7-Eleven franchisees in California to sign the
21 general releases contained within 7-Eleven franchise renewal contracts, as described above, and
22 whether such releases are valid as applied to Plaintiffs’ pending claims in the prior *Haitayan*
23 matter.
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40. Plaintiffs seek an order of this Court pursuant to Fed. R. Civ. P. 57, 28 U.S.C. §§2201–02, and California Code of Civil Procedure § 1060 declaring the general release invalid and unenforceable and declaring that Plaintiffs, as well as putative class members in the *Haitayan* matter, may continue their employment with 7-Eleven (by renewing their franchises) without releasing their claims in that matter. To the extent any franchisees have signed, or will sign, such a release, the Court should declare those general releases to be invalid and unenforceable.

Injunctive Relief

42. 7-Eleven's conduct, as set forth above, will imminently force Plaintiffs and other 7-Eleven franchisees in California to choose between their employment and livelihoods (as well as substantial investments they were required to pay for their jobs in the form of "franchise fees"), on the one hand, and the right to pursue their state and federal wage claims in the previous *Haitayan* matter, on the other. 7-Eleven's conduct threatens imminent violation of Plaintiffs' rights, as well as those of other 7-Eleven franchisees in California.

COUNT IV

**Unfair and Unlawful Business Practices Under California Business
& Professions Code § 17200 *et seq.***

49. Plaintiffs reallege and incorporate by reference the allegations in the preceding paragraphs as if fully set forth herein.

50. 7-Eleven's conduct as set forth above, in presenting Plaintiffs and other 7-Eleven franchisees with a general release that purports to terminate their pending state and federal wage claims in the prior *Haitayan* matter, is unlawful.

51. 7-Eleven's conduct is also unfair in that it is unethical, oppressive, unscrupulous, coercive, and offensive to California public policy. Having had state and federal wage claims filed against it by "franchisees" who claim that they are in fact employees, 7-Eleven seeks to force Plaintiffs (and putative class members in the previous *Haitayan* matter) to choose between pursuing this claim, and keeping their jobs and livelihoods (and not walking away from the substantial investments they were required to make to obtain these jobs).

52. As a result of 7-Eleven's unlawful and unfair conduct, Plaintiffs will imminently suffer injury in fact by way of losing either their jobs (and these substantial investments) or their statutory labor rights.

53. Plaintiffs seek declaratory and injunctive relief under this Count pursuant to California Business & Professions Code § 17203.

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Declare that 7-Eleven's actions described in this Complaint violate the rights of Plaintiffs and putative class members in the previous *Haitayan* matter under California state and federal law and constitute unlawful and unfair business practices;

- 1 b. Declare that the General Release contained within the 7-Eleven franchise renewal
2 contract is invalid, unenforceable, and unconscionable, as it pertains to claims
3 pending in the *Haitayan* appeal;
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5 c. Preliminarily and permanently enjoin 7-Eleven, its officers, agents, servants, and
6 employees, from conditioning the renewal of a 7-Eleven franchise on the signing
7 of a general release requiring “franchisees” to dismiss these previously filed state
8 and federal wage claims, and permanently enjoin the enforcement of such a
9 release (for any that are signed);
10 d. Award Plaintiffs reasonable attorneys’ fees, costs, and expenses of litigation,
11 pursuant to California Code of Civil Procedure § 1021.5; and
12 e. Order such other relief as the Court may deem just and proper.

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14 Dated: June 19, 2018

15 Respectfully submitted,

16 SERGE HAITAYAN, JASPREET
17 DHILLON, ROBERT ELKINS, and
18 MANINDER “PAUL” LOBANA,

19 By their attorneys,

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